W.A.M.P. NOS. 1685, 1686 & 1689 OF 2006
IN
W.A. NO. 1030, 1031 & 1465 OF 1998

S.J.MUKHOPADHAYA, J.
AND
R.SUDHAKAR, J.

COMMON ORDER

S.J.MUKHOPADHAYA, J.

The Agri-Horticulture Society, a society registered under the Societies Registration Act (respondent herein), preferred three writ petitions, W.P. Nos. 11058/89, 11059/89 and 11178/89 against the State of Tamil Nadu and its officials challenging the declarations as were made by G.O. No.1259, Revenue (LI) dated 5.8.89 communicated in Lr. No.45135/L1/89 dated 5th August, 1989; proceeding of the Collector of Madras dated 5th August, 1989, in J2/77/535/88 and proceeding of the Inspector of Societies, Madras bearing No.12504/Ma./Pa./88 dated 2nd August, 1989. Two of the writ petitions, W.P. Nos.11058 and 11059 of 1989 were heard and disposed of by common judgment dated 19th June, 1998. Both the writ petitions were allowed and the impugned orders, letter and proceeding were quashed with direction to the respondents to hand over the lands, which were the subject matter of the writ petitions and earlier received from the petitioner-society. The other writ petition, W.P. No.11178/89 was heard separately and allowed on 5.10.98 and the show cause notice as was issued on 2.8.89 was quashed.

2. Being aggrieved, the State of Tamil Nadu preferred writ appeals. W.A. Nos.1030 and 1031 of 1998 were preferred against the common judgment dated 19.6.98, while W.A. No.1465/98 was preferred against the other judgment dated 5.10.98. All the three appeals were admitted for hearing together and interim order was passed in favour of the appellant, State of Tamil Nadu. It appears that while the appeals were running in the list for final hearing, on 21.12.04, learned Government Advocate, who appeared for the appellants, sought permission to withdraw all the three writ appeals and made an endorsement to that effect. A Bench of this Court, by its common judgment dated 21.12.04, accordingly, dismissed all the appeals as withdrawn. The order aforesaid reads as follows :-
"Mr. E.Sampath Kumar, learned Government Advocate appearing for the appellants seeks to withdraw the writ appeals and has made endorsement which reads as follows:-
"As per instructions, I may be permitted to withdraw the above appeals.
2. The appellants are permitted to withdraw the above appeals and the same are dismissed as withdrawn. Connected CMPs are closed."

3. After number of days, the State of Tamil Nadu preferred three petitions for restoration of all the three appeals along with petitions for condonation of delay on the ground that the writ appeals were withdrawn by the counsel, though no such instruction was given by the State.

4. Learned Advocate General, while pressing the petition for condonation of delay and restoration of

writ appeals, submitted that the matter involved is of paramount public interest. The land was allotted in favour of the society, but because of mismanagement and other allegation, it was taken back. This Court, without going into the merit of the writ appeals, asked the parties to assist the Court on the issue whether the cases once dismissed as withdrawn without liberty of the court to prefer another case, such case could be restored and if it is permissible, whether this is a fit case for restoration.

5. Learned Advocate General referred to a decision of the Supreme Court in Jet Ply Wood (P) Ltd. & Another Vs Madhukar Nowlakha & Others reported in (2006) 3 SCC 699. In the said case, Madhukar Nowlakha entered into an agreement for sale in respect of a land together with building thereon with one Biswarup Banerjee. The said agreement having not been acted upon for a long time, Madhukar Nowlakha filed suit in the court of Civil Judge (Senior Division) at Alipore, for specific performance of agreement with further prayer for temporary injunction to restrain the concerned party from alienating the said premises. Subsequently, the plaintiff sought permission to withdraw the suit on the ground that there was a talk of settlement between the parties and so he no longer wish to proceed with the suit. No leave was sought for to file a fresh suit on the same cause of action. Learned Judge allowed the plaintiff to withdraw the suit without liberty and thus dismissed the suit as withdrawn. After about one month from the withdrawal of the suit, the defendant, Biswarup Banerjee and others sold the premises to a third party, M/s.Jet Ply Wood Limited. Within a month thereafter, Madhukar Nowlakha applied to the learned Civil Judge (Senior Division) for recalling the order by which the suit was permitted to be withdrawn on the ground that he had been misled into making such application on account of misrepresentation of Biswarup Banerjee and other co-owners that they would sell the property to him. The said application was rejected by the learned Civil Judge (Senior Division). After such application for recalling the order was rejected, a second suit was filed. As interim prayer made in the second suit was rejected, thereafter, Madhukar Nowlakha moved before the High Court at Calcutta under Article 227 of the Constitution challenging the trial court's order refusing to recall its earlier order whereby the suit was dismissed as withdrawn. The High Court admitted the application and directed to serve notice on the opposite parties and ordered to maintain status quo. Interim order was passed on 20.8.98 to the effect that "status quo as on date shall be maintained. The parties are at liberty to move for modification of the order". Learned single Judge of the Calcutta High Court allowed the revision application and restored the original title suit for trial before the Civil Judge (Senior Division). In this background, the matter moved upto the Supreme Court. Having noticed the aforesaid fact and hearing the submissions as were made by the parties, the Supreme Court held as follows :-
"24. From the order of the learned Civil Judge (Senior Division), 9th Court at Alipore, it is clear that he had had no intention of granting any leave for filing of a fresh suit on the same cause of action while allowing the plaintiff to withdraw his suit. That does not, however, mean that by passing such an order the learned court divested itself of its inherent power to recall its said order, which fact is also evident from the order itself, which indicates that the court did not find any scope to exercise its inherent powers under Section 151 of the code of Civil Procedure for recalling the order passed by it earlier. In the circumstances set out in the order of 24.9.2004, the learned trial court felt that no case had been made out to recall the order which had been made at the instance of the plaintiff himself. It was, therefore, not a question of lack of jurisdiction but the conscious decision of the court not to exercise such jurisdiction in favour of the plaintiff."

6. So far as the delay is concerned, learned Advocate General, while referred to the application and the manner in which the file moved from one authority to other, submitted that there was no intentional laches and for that the delay has taken place, which is about 567 days (W.A. Nos. 1031 & 1032/98) and 594 days (W.A. No.1465/98). Reliance was also placed on the decision the Supreme Court in State of Nagaland Vs Lipok Ao & Others reported in (2005) 3 SCC 752. In the said case, the Supreme Court held that expression "sufficient cause" should be considered with pragmatism in

a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Having noticed that considerable delay of procedural red tapism takes place in the decision making process of the Government, the Supreme Court held that certain amount of latitude is permissible.

7. Learned counsel for the respondent-society, relied on letter Roc. No.393 of 2004, dated 21.12.2004 written by the then Advocate General of Tamil Nadu to the Special Government Pleader, High Court, Chennai, by which he was asked to withdraw the appeals. For proper appreciation of the case, it is desirable to extract the relevant portion of the letter, as quoted hereunder :-
"**********
Advocate General of Tamil Nadu

Letter Roc No.393 of 2004, dated 21.12.2004

To

****
Special Government Pleader
High Court, Chennai 600 104.

Sir, Sub : W.A. Nos. 1031, 1038 and 1465 of 1998, filed by the State against the Tamil Nadu Agri-Horticulture Society, rep. by Secretary, Thiru V.Krishnamurthy, on the file of High Court, Madras.

The above matters my appearance has been sanctioned by the Government. Yesterday (20.12.2004) I received instructions from the Government to withdraw the above cases. Hence, the above appeals filed by the State need not be prosecuted and take steps to withdraw the said appeals. After withdrawal of the appeals please inform me.

Yours sincerely,

(**********)"

8. Learned senior counsel for the respondent placed reliance on Supreme court decision in Periyar and Pareekanni Rubbers Ltd. - Vs State of Kerala reported in AIR 1990 SC 2192. In the said case, the Supreme Court held that any concession made by the Government Pleader in the trial court cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the Bar, since the Advocate General makes the statement with all responsibility. According to the learned senior counsel, the appellants having withdrawn the appeals at the instance of the Advocate General, it will be presumed that there was an instruction, and now merely because of change of political Government or appointment of a new Advocate General, they cannot retract from the statement as was made by the then Advocate General.

9. We called for the relevant file and also asked the learned counsel for the State to circulate the list of relevant dates and events of file notes and the proceeding, which were felt important. Such circulation has been made and copies have been served on the counsel for the respondent. From the relevant file, the following fact emerges:-

10. The writ appeals were preferred on 27.7.98 (W.A. Nos. 1031 & 1031/98 / 14.10.98 (W.A. No.1465/98). The writ appeals were admitted and an interim order was passed on 20.8.98. A letter was issued on 31.5.99 from the Revenue Department to the Government Pleader asking him to inform the stage of the case. Similar letters were issued on 31.5.99, 11.6.99 with reminders dated 17.8.99, 20.9.99, etc. Letters were also sent by the Special Commissioner and Commissioner of Land Administration requesting the District Collector, Chennai, to report the stage of the appeals as evident from letter dated 15.9.99. A large number of letters were issued by one or other officer to the Government Pleader asking for the details and the stage of the writ appeals. Acknowledgements were also sent by the Government Pleader by letter dated 19.11.99. Having granted an interim order, a D.O. letter was written by the Secretary to Government, Agricultural Department on 23.11.99 asking the Director of Horticulture and Plantation Crops to submit report in respect of activities of the Department since taking possession of the lands. Reply was also sent on 1.12.99 explaining the status of the land. There was a constant monitoring from the Government and request was made to ensure early hearing of the appeals. A draft affidavit was also forwarded on 8.12.99 for fixing an early date of final hearing. A number of letters proceeded thereafter giving details about the land and the efforts taken by the Collector as also the matter relating to early hearing of the appeals. On 23.2.00, a D.O. letter was written by the Secretary to Government, Revenue Department to the Additional Advocate General, informing him about the nature of sensitiveness of the appeals and request was made to expedite the matter by fixing an early date of hearing. Thereafter, it appears that the matter was listed for hearing, but was not taken up till the year 2004.

11. On 19.5.04, as appears from the file, a D.O. letter was sent by the Director, Horticulture and Plantation Crops requesting the Secretary to Government, Revenue Department, for expediting the hearing of the appeals. On 10.6.04, the Secretary to Government, Revenue Department, requested the Government Pleader of the High Court for early hearing of the appeals. Another letter was issued to the Director, Horticulture and Plantation Crops on the same date, (i.e.) 10.6.94 and he was asked to follow up the matter. But, somehow or the other, when the case was taken up on 21.12.04, the appeals were withdrawn by the Government Advocate on the ground that he has been asked to withdraw the appeal and impugned order dismissing the appeals as withdrawn was passed on the said date. On the same date, (i.e.) 21.12.04, the Government Advocate wrote a letter to the Secretary of the Commercial Taxes and Religious Endowments Department regarding the withdrawal of the appeal. There is nothing on the record to suggest that any intimation was given to the Revenue Department or the Director of Horticulture and Plantation Crops, who were dealing with the case and were requesting for early disposal of the appeals. It is only when a legal notice was issued on behalf of the society by G.R. Associates, a Law Firm, on 29.10.05, the matter was brought to the notice of the higher officers of the Revenue Department.

12. From the note-sheet dated 19.1.05 it appears that there was no instruction issued by any authority to the Government Pleader for withdrawal of the appeal. The Commercial Taxes Department also by its note dated 7.2.05 informed that it had not given any instruction to withdraw the appeal. Relevant portion of the office note given by the Commercial Taxes Department, dated 7.2.05, is quoted hereunder :-
"4. In the above circumstances, it may be stated that this department has not issued any instructions to Advocate General/Government Pleader, High Court, Chennai in the above matter. With reference to B on Page 30 ante, it may also be stated that the main file of this department has been circulated to Minister (Law) for obtaining orders permitting the Additional Advocate General to appear in the Writ Appeal cases relating to this department and its return is awaited.
5. With the above information the file may be returned to Revenue Department."

13. The Revenue (LD.V) Department, by its note dated 18.2.05, informed that no instructions were issued by the department in the above matter, as quoted hereunder :-

"Please see the note of the C.T. Department on pp. 31-32 ante.
2. That Department has stated that the Spl. Govt. Pleader, High Court, Chennai, in his letter dated 13.12.04 has requested the Government (CT Dept) to issue necessary orders to permit the AAG, High Court to appear in the Writ Appeal Cases, relating to the Agri-Horticulture Society, it has also been stated by the CT Dept., that the file relating to the appearance of AAG is under circulation.
3. Further it is seen from a copy of the letter of the Govt. Advocate, High Court, Chennai, dated 21.12.2004 (addressed to the CT Dept., etc.) that based on the instruction of the Advocate General it was represented before the Bench to dismiss the W.A. Nos. 1031 and 1465/98 as 'Withdrawn' and the Bench dismissed the above Was as Withdrawn and a copy of the order in this regard is awaited.
4. That department has also stated that no instructions were issued by that department in the above matter.
5. With this information, the file may be submitted for further orders."

14. From the relevant file, another important factor has come to the notice of the Court. It appears that possession of the land was taken by the Department and it was with the Department when the order of status quo was passed by the Court on 20.8.98. Later on, it came to the notice of the officials that somehow or the other, possession has been taken by the society and, accordingly, an enquiry was made as to how it happened.

15. Generally, the department takes the approval of the Minister, if any further appeal or petition is to be preferred before a Court of Law. The file was circulated to the Hon'ble Minister for PWD, P&E and Revenue and it was brought to his notice that without any instruction given by the Department or any other person, the writ appeals were withdrawn. The file was circulated to the Minister with a request to indicate the further course of action, as evident from the office note dated 4.10.05, but it was ordered to be placed before the Cabinet, though there was no requirement to place the matter before the Cabinet. Thereafter, a note for Cabinet Meeting was prepared on 24.2.06. It was brought to the notice of the Cabinet that no instructions were issued to the Government Pleader either by the Revenue Department or the Commercial Taxes Department to withdraw the appeal, but while considering the matter along with the other agenda items, the Cabinet in its meeting held on 25.2.06, ordered to implement the High Court's order.

16. Learned Advocate General submitted that even the letter written by the then Advocate General dated 21.12.2004 is neither in the file of the Department nor in any of the files at the office of the Advocate General. It was brought to the notice of the Court that the copy of the said letter has been supplied by the respondent-society.

17. In this case, we do not want to go into the question as to what happened on 21.12.04 or the said letter is actually available on the record or not. We also do not want to make any observation in regard to the action.

18. The only question arises for consideration is whether in the facts and circumstances the appeals in question are to be restored or not ?

19. Admittedly, the Advocate General never appeared in the case nor made any statement across the Bar. No statement having been made across the Bar, the respondent-Society cannot derive any advantage of the decision rendered by the Supreme Court in the case of Periyar and Pareekanni Rubbers Ltd. (supra). What happened after 21.12.04 (i.e.) after the dismissal of the writ appeal is not required to be gone into for deciding the question of restoration. The question is whether there was any instruction given by the State to the Special Government Pleader to withdraw the writ appeals? Admittedly, no such instruction was given to withdraw the appeals, as noticed from the file and discussed above. The letter written by the then Advocate General to the Special Government Pleader

on 21.12.04 (i.e.) just on the date of hearing was not brought to the notice of the Court nor was placed on record. Therefore, the respondent-Society cannot rely on the same to take any advantage.

20. In the facts and circumstances, we accept the submission as made on behalf of the State and being satisfied with the ground, condone the delay, restore W.A. Nos.1030, 1031 and 1465 of 1998 to its original file. W.A.M.P. Nos. 1685, 1686 and 1689 of 2006 are allowed.

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